

Comments regarding the proposed City Ordinance:

AN ORDINANCE AMENDING CHAPTER 9.22 OF TITLE 9 OF THE NEVADA CITY MUNICIPAL CODE ENTITLED "PROHIBITING MEDICAL MARIJUANA DISPENSARIES," AND RENAMING IT "MEDICAL MARIJUANA DISPENSARIES AND OTHER MARIJUANA BUSINESSES AND ACTIVITY" AND ADDING CHAPTER 17.142 ENTITLED "MEDICAL MARIJUANA USES AND ACTIVITY" TO THE NEVADA CITY MUNICIPAL CODE AND AMENDING CHAPTER 17.48 ENTITLED "LIGHT INDUSTRIAL ZONE"

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[1]

**9.22.050. Application for Medical Marijuana Business Permit: Renewal Applications; and Effect of Revocation or Suspension of State License.**(reads in part)

(4) An application for renewal of a medical marijuana business permit shall be rejected if any of the following exists:

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**WE SUGGEST:** that (4) read..... renewal of a medical **may** be rejected...

"May" gives the city the opportunity to exercise judgement for agreed upon mitigating circumstances.

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(4)(c) The medical marijuana business has not been in regular and continuous operation in the four (4) months prior to the renewal application.

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**WE SUGGEST:** a clarification of the term "regular and continuous operation" to exclude natural causes for an abatement of regular operations.

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[2]

**9.22.070. Permittee Selection Process.**

B. Prohibition on Transfer of Medical Marijuana Business Permits.

1. No person may transfer ownership or control of a medical marijuana business or transfer any medical marijuana business permit issued under this Chapter.

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A medical marijuana dispensary is a commercial business. The prohibition of transfer is important to the city in its approval process. (a) However, all businesses have changes of ownership and on occasion a desire of the owners to exit from the business arises. ... and

(b) In 2018 the existing state law expands to allow for the existing mutual benefit corporations to convert to a “for profit” status. At that point, the ‘ownership’ of the mutual benefit corporations transfers from the ‘members’ to the principals and ‘investors.’

**WE SUGGEST:**

It is clear that the transfer of a license to a NEW unrelated entity is undesirable and should only be allowed with great scrutiny by the City, however there may be allowable mitigating circumstances for exempting or allowing certain transfers.

There should be a clarification of “change in business” form as an allowable transfer.

The City should consider a process of approval of a new ownership group. The operations of regular businesses call for sales of entities and movements of shareholders. (a 50% trigger is often used)

Also, after there are shareholders or members of the Dispensary, there is often a transfer from individual ownership to a “family trust” for estate and probate reasons. This should also be an exempt transfer.

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**9.22.080. Requirements Before Permittee May Commence Operations**

E. Limitations on City’s Liability.

(1) They must execute an agreement, in a form approved by the city attorney, agreeing to indemnify, defend (at applicant’s sole cost and expense),

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This clause is virtually impossible to cover for any business. For instance, the City might be sued by a citizen for issuing a medical cannabis license. How is that related to the dispensary? Does the city even have the right to suggest such a condition?

**WE SUGGEST:**

The City meet with local business counsel to discuss a clause that mitigates the City’s exposure for claims arising from the acts of the dispensary only. That type of mitigation clause can be insured for by a dispensary.

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## 9.22.090. Operating Requirements for Medical Marijuana Dispensaries.

### A. Records and Recordkeeping.

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The scope of recordkeeping seems to extend exclusively to “cultivated” marijuana products. A dispensary will sell medical cannabis and it will sell cannabis derived products – such as a oils, salves, and edibles.

#### **WE SUGGEST:**

That the City expand these clauses to include “and other cannabis related products”

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### B. Security Measures.

(d) Installing 24-hour security surveillance cameras .... and that it is remotely accessible by the City Manager or his/her designee(s), and the City’s Police Department, and

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In consultation with security experts, this clause may cause problems. Access to feedback of recorded footage may be a problem. Some cities require access to live footage and have the ability to request footage when needed.

#### **WE SUGGEST:**

The clauses regarding access to security surveillance be reviewed by security experts to insure maximum safety by the City and its Policy department, but allow for existing systems within the dispensary marketplace.

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(d) continued: - Video recordings shall be maintained for a minimum of forty-five (45) days, and shall be made available to the City Manager or his designee upon request.

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This requirement requires an enormous amount of storage capacity with storage systems costings upwards of and additional \$25,000.

#### **WE SUGGEST:**

The City request 30 days of storage.

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**9.22.090. Operating Requirements for Medical Marijuana Dispensaries (continued).**

(i) Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the City Manager or his/her designee(s), with such approval not to be unreasonably withheld.

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We do not understand this second clause - ...”prior review and approval of the City Manager” - The Security personnel will be appropriately licensed by the State. Requiring the City Manager to be involved actually opens the city to any liability should the Security personnel fail in any way.

**WE SUGGEST:**

That the second clause in sub paragraph (i) be deleted.

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(l) Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities.

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Some of the larger dispensaries are not using “uniformed” security personnel, but rather non-uniformed, highly trained security. Uniformed presence within the facility makes the environment unfriendly and creates a stigma of illegality for the patients. Other dispensaries are reporting no difference in crime, but an uptick in the use of the facilities by patients.

**WE SUGGEST:**

That the City remove the requirement that security personnel be uniformed.

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**F. Miscellaneous Operating Requirements.**

(9) Signage and Notices.

(e) Signage shall not be directly illuminated, internally or externally. No banners, flags, billboards or other prohibited signs may be used at any time

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This makes the operations of the dispensary at night untenable. Clearly the signage must be in accordance with the City's Municipal Code, however, approved signage must be illuminated during evening hours, like all other businesses. We assume this does not apply to internal signage.

**WE SUGGEST:**

The city modify the signage requirement to be in accordance with existing Municipal code and in compliance with Guidelines set forth by the State of California.

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**9.22.090. Operating Requirements for Medical Marijuana Dispensaries. (Continued)**

(f) Holders of medical marijuana business permits agree that, as an express and ongoing condition of permit issuance and subsequent renewal, the holder of the permit shall be prohibited from advertising any medical marijuana business located in the City of Nevada City utilizing a billboard (fixed or mobile), bus shelter, placard, aircraft, or other similar forms of advertising, anywhere in the state. This paragraph is not intended to place limitations on the ability of a medical marijuana business to advertise in other legally authorized forms, including on the internet, in magazines, or in other similar ways.

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This clause also seems to create a severe limitation on the profitability of a business. Does the City have the right to prohibit a Nevada City Business from advertising "anywhere in the State." We assume this is meant to detract from a vision of Nevada City as a marijuana 'haven.' However, it will create a serious detriment to business operations.

**WE SUGGEST:**

That the City Manager be involved with the advertising, by being allowed to "sign-off" on proposed ads. This should extend to Nevada City only. A business must allow its customers to know of its services. All businesses within Nevada City do so currently.

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**9.22.090. Operating Requirements for Medical Marijuana Dispensaries. (Continued)**

(11) Odor Control.

(1) an exhaust air filtration system with odor control that prevents internal odors from being emitted externally. The dispensary applicant shall provide a statement from the exhaust air filtration manufacturer that the system has been designed to achieve the above standard based on the specific building size and layout;

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The Manufacturer would likely, not give such a statement of compliance. A local mechanical engineer might be able to issue such a statement.

**WE SUGGEST:**

The clause be modified to have a mechanical engineer certify compliance.

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**9.22.090. Operating Requirements for Medical Marijuana Dispensaries. (Continued)**

(19) All restroom facilities shall remain locked and under the control of management.

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We do not understand why this clause is in the ordinance. In order to enter the facility the patient is required to present a valid ID card, only then do they enter the first set of doors. Then, they are searched in the Computer and only valid patients may proceed into the store. Thus, there is no “outside” use of the restroom facilities.

**WE SUGGEST:**

This clause be dropped and the City allow the dispensary to control the use of its restroom facilities.

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**9.22.100 Application of Chapter; Other Legal Duties.**

D. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Nevada City, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the medical marijuana business whether or not said violations occur within the permit holder’s presence.

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Certainly the City is trying to achieve something here to mitigate its liabilities. But, this is so far reaching that we fail to grasp the intent. “shall be responsible...” is a broad legal term that we fail to understand how to interpret it.

**WE SUGGEST:**

The City meet with Legal counsel to further discuss its intent and help craft a reasonable ordinance that mitigates the City’s exposure.

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This concludes our first review of the present ordinance.